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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-108

THE INGALLS SHIPBUILDING DIVISION OF LITTON SYSTEMS, INC.,
Petitioner,

versus

AMERICAN ZINC CO., WILBUR ELLIS CO., INC., ET AL.,
Respondents,

and

JACOB A. FOSTER,
Respondent,

and

VERA CRUZ CIA. NAVIERA, S.A., ETC.,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF OF VERA CRUZ CIA. NAVIERA, S.A. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Statement of the Case

The petition fails to set forth any proper reason why this Court should exercise its discretionary review over the decision of the Court of Appeals. Examination of the very questions presented by petitioner reveals that this case con-

cerns nothing more than the application of uncontroverted principles of maritime law to a particular factual situation. In the words of the Court of Appeals, the long and short of it is simply that petitioner "is dissatisfied with the findings of fact made by the Court below" (441 F.2d at page 1101, appendix to petition [hereinafter "A."], page 54).

The basic determination which petitioner, Ingalls, seeks to review is whether the pilot, respondent Foster, of the motorvessel Stella Maris, owned by respondent Vera Cruz Cia. Naviera, S.A. and carrying the cargo of respondents, American Zinc Co., *et al.*, was exercising proper care in navigation when the vessel collided with Ingalls' underwater shipway in the Pascagoula River. The trial Court, sitting in admiralty without a jury, found that the cause of the casualty was Ingalls' failure to maintain in its proper position the buoy with which the United States Coast Guard required Ingalls to mark the end of its shipway. The trial Court decided that under the circumstances of this case, established by the evidence before it, the Stella Maris' pilot was not negligent in relying upon the position of Ingalls' buoy which, as the Court found, was off station and "lured the pilot into a dangerous position or trap" (A. 48).

Petitioner Ingalls' appeal to the Court of Appeals was concededly founded upon its disagreement with the findings of fact made by the trial Court, and the Court of Appeals held, after full review of the voluminous trial record, that "there is ample evidence to support each and every one of [the trial Court's] findings" (A. 54). Even in this Court, however, petitioner persists in attacking those findings of fact.

Rule 19 of this Court states that a writ of certiorari "will be granted only where there are special and important reasons therefor." There are no such reasons in this case: the decision below is of interest only to the parties, rests

on the particular facts of the case, and raises no issue of law. The Questions Presented raise only questions of fact determined adversely to petitioner by the trial Court, and affirmed *per curiam* on appeal. We submit that the petition should be denied on its face without further inquiry by this Court. However, we briefly set forth below the answers to petitioner's unfounded assertions that the trial Court erred in its findings of fact and in its determination that under well-established, and undisputed, principles of maritime law the navigation of the Stella Maris was proper.

ARGUMENT

First Question Presented: Qualifications of the Stella Maris' pilot.

In support of its claim of lack of knowledge on the part of the Stella Maris' pilot, Ingalls cites to this Court (petition [hereinafter "P."], pages 4-5, 9-10) certain pre-trial deposition testimony which, Ingalls fails to mention, was explained and elaborated upon in the pilot's testimony at the trial (Record [hereinafter "R."], pages 1442-4). Ingalls fails to comment, moreover, on the fact that in the very Finding from which Ingalls quotes (P. 4, 9) an excerpt out of context—"the Respondent pilot, Foster, was only* 'generally aware of the shipways' "—the trial Court also found:

> "On previous occasions Foster had inspected the area around Buoy No. 2 and the end of Shipway No. 1 and had determined that in May 1969, a month before this collision, Buoy No. 2 was located at 15-20 feet west of the west end of Way No. 1 and that there was 35 feet of water up to the Buoy." (A. 35-6).

*The word "only" is Ingalls', not the Court's.

Contrary to what Ingalls claims (P. 9), there was *no* admission by pilot Foster of "lack of knowledge of the shipways and their bearing upon navigation", the Court below did *not* apply a "requirement of only a general awareness by the pilot" concerning the shipways, and the decision below is *not* in conflict with established maritime law that a pilot is obliged to be familiar with hazards to navigation. Ingalls is simply dissatisfied with the trial Court's finding of fact that this experienced Pascagoula bar pilot "exercised the due care and skill required of him" (A. 46).

Second Question Presented: Reliance by the pilot on Ingalls' marker buoy.

Ingalls' attack upon the pilot's reliance on the position of Ingalls' marker buoy is answered by the trial Court's finding, never mentioned in the petition, that:

> "Ingalls No. 2 Buoy was the only navigational aid in the Pascagoula River at the place of the collision, and the pilot under the circumstances at night could not through the exercise of reasonable care as a reasonably prudent pilot determine that this buoy was out of position. Therefore, he was entitled to rely upon it being in its proper and designated position, and not off station. [citation] Thus, although the general rule is that it is improper for a pilot to rely solely and exclusively upon a buoy when other sources of information are available, this general rule is not applicable to this case since the Court finds that there were no other sources of information available or other navigational aids upon which the pilot could rely to readily and accurately estimate the ship's position in the channel." (A. 47)

The factual issue submitted for determination by the trial Court was whether pilot Foster had reason to suspect that Ingalls' buoy was not on station and whether he had

any means other than the buoy by which he could have determined the Stella Maris' position in the channel. On the basis of all the evidence, including extensive factual and expert testimony adduced on both sides of this question, the trial Court found as a fact that there was no reason for the pilot to suspect that the buoy was not on station and, further, that the buoy was the only navigational aid which the pilot could use to determine the location of Ingalls' underwater shipway. These issues of fact were fully briefed and argued on appeal, and the Court of Appeals concluded:

> "Our own review of the briefs and voluminous record in this appeal establishes that the trial court gave lengthy and careful consideration to all the evidence in this case, and that there is ample evidence to support each and every one of its findings." (A. 54)

Third Question Presented: Alleged inconsistent findings of fact.

Ingalls claims (P. 14-15) that the trial Court's findings have the Stella Maris traveling a quarter of a mile in several seconds. What the trial Court actually found, however, is that after looking for it for some minutes, pilot Foster observed Ingalls' marker buoy, in a safe relative position, when the Stella Maris was some 1,500 feet below it (A. 32) and, in the following Finding (A. 33), that the Stella Maris collided with Ingalls' shipway several seconds after the pilot sighted the buoy abeam of the Stella Maris. The trial court did *not* find that the pilot *first* sighted the buoy abeam, as Ingalls would have it. Contrary to Ingalls' assertion (P. 15), there is *no* evidence in the record that the pilot did not see the buoy until it was abeam*; he testified that

*The Stella Maris' master and lookout testified, and the trial Court correctly found, that *they* did not see the buoy until a few seconds before the collision. There was no such testimony as to the pilot.

he picked up the buoy "in plenty of time to have changed my course, there, if it was necessary. * * * I saw it in sufficient time, like I said, if I thought I was out of the channel I had a lot of time there to get back in it." (R. 1271-5)

Ingalls' contentions regarding the alleged impossible speed, based on Ingalls' contrived interpretation of the testimony, were thoroughly briefed and argued to the trial Court, which had an opportunity to judge pilot Foster's credibility, and to the Court of Appeals, which affirmed the findings of the trial Court.

Fourth Question Presented: The current set the Stella Maris down on Ingalls' shipway.

The petition states (P. 15): "Also, the Court below found as a fact that there was no wind or tide to move the vessel from its intended course of 000° true north." Not so: once again, Ingalls' assertion is inaccurate. The trial Court's finding was that "there was no *apparent* tide or wind condition present which affected the navigation of the vessel as she proceeded northward." (A. 31, emphasis added) The trial Court affirmatively found as a fact, on the evidence before it (R. 225, 241, 1447) that at the time of the collision the tide was "just beginning to fall, with the current moving in a southeasterly direction" (A. 36) and therefore determined that the Stella Maris "crabbed" to the east, toward Ingalls' submerged shipway, "because the tide was falling to the southeast" (A. 49).

Ingalls reiterates (P. 7, 16) that respondents' expert witness testified that the falling off to east must have been caused by a compass or helmsman's error. This, too, is an

inaccurate statement: the expert testified (R. 1699) that in order to get into collision on the course she was steering, "It would have to be a set. The ship would have crabbed to the right." In response to a subsequent question which directed him to *assume* no such setting effect from current or wind, the witness replied that in that event there would have to be an error in the steering or compass (R. 1700).

The petition is, therefore, in error in advising this Court that the trial Court found that there was no wind or tide to set the vessel, in advising this Court that there was no evidence that the current was setting to the southeast, and in advising this Court that respondents' expert testified that the cause of the set to the east must have been helm or compass error. These same objections to the trial Court's findings were advanced on the appeal to the Court below, and rejected after careful review of the record.

Fifth Question Presented: Award of interest.

This issue will be dealt with in the brief to be filed by respondents American Zinc Co., *et al.*, owners of the cargo aboard the Stella Maris at the time of the casualty. Suffice it to say here that the question of discretion to deny interest is not one with which this Court should be concerned.

Conclusion: Certiorari should be denied.

It is submitted that there is no merit in this petition for certiorari. No questions of law are involved, there is no conflict among the circuits, and the Courts below in no way departed from the accepted and usual course of ju-

dicial procedure. There is nothing here, no "special" or "important" reason—or, indeed, *any* reason—why this case should take up the time of this Court.

The petition should be denied.

Dated: New York, N. Y.
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Respectfully submitted,

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